



July 31, 2002

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-4186

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166477.

The City of El Paso Police Department (the “department”) received two requests for information relating to a specific accident. You indicate that the department has released some information responsive to the requests. However, you claim that other portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that you have not fully complied with section 552.301 of the Government Code. Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You indicate in your initial correspondence with this office that you included a copy of the first request with your correspondence and labeled it as “Exhibit A.” Furthermore, you indicate that the information responsive to the first request was submitted as “Exhibits B and C.” However, this office did not receive a copy of the first request for information. While we received two exhibits—Exhibits A and B—they consist of the responsive information, not the request for information.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is

presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You contend that the requested information is excepted under section 552.108 of the Government Code. However, you have not demonstrated a compelling reason for withholding the requested information under section 552.108. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived); *but see* Open Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the Public Information Act, the need of another governmental body may provide a compelling reason for withholding the requested information). Nevertheless, sections 552.101, 552.117, and 552.130 can provide compelling reasons for overcoming the presumption of openness. Therefore, we will address your arguments under these exceptions.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You inform us that Exhibit B contains address and telephone number information that was supplied to the call-taker station at the department by Southwestern Bell. Based on your representation that the City of El Paso is included in an emergency communications district that is subject to section 772.318 of the Health and Safety Code, we agree that telephone numbers of the 9-1-1 callers must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318. However, we do not find that Exhibit B contains any originating addresses of 9-1-1 callers for the purpose of section 772.318.

We also note that the submitted documents contain social security numbers that may be excepted from disclosure under section 552.101. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file

are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

You also contend that a telephone number, which you have highlighted in pink, is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(2) provides:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

....

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

We agree that the department must withhold the highlighted peace officer's home telephone number. *See* Open Records Decision No. 670 at 5-6 (2001) (A governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies").

Finally, you contend that the submitted documents contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We find that the driver's license numbers, vehicle identification numbers, and license plate numbers relating to driver's licenses and motor vehicle titles or registrations issued by an

agency of the State of Texas must be withheld under section 552.130. We note that the out-of-state license plate numbers and accompanying vehicle identification numbers are not excepted from disclosure under section 552.130. We have marked the information that the department must withhold under section 552.130.

In summary, the department must withhold the originating telephone numbers of 9-1-1 callers contained in Exhibit B under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must also withhold social security numbers contained in the submitted information under section 552.101 if the numbers were obtained or are maintained pursuant to a provision of law enacted on or after October 1, 1990. The department must withhold the home telephone number of the peace officer contained in Exhibit B under section 552.117(2) of the Government Code. Finally, the department must withhold the information relating to Texas driver's licenses, vehicle identification numbers, and license plate numbers under section 552.130 of the Government Code. The department must release the remainder of the submitted information to the requestors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 166477

Enc: Submitted documents

c: Ms. Claudia Flynn
Progressive Insurance Co.
1201 Airway Boulevard, Suite B-3
El Paso, Texas 79925
(w/o enclosures)

Mr. Carl Hanly
544 Ridgemont Drive
El Paso, Texas 79912
(w/o enclosures)